



**SPEKTRA**

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# General Service Conditions (GSeC)

SPEKTRA Schwingungstechnik und Akustik GmbH Dresden

Heidelberger Straße 12 | 01189 Dresden

**Version 01.20**

[www.spektra-dresden.com](http://www.spektra-dresden.com)

The **provision of services** by SPEKTRA Schwingungstechnik und Akustik GmbH Dresden, Heidelberger Straße 12, 01189 Dresden, is subject to the following conditions:

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## 1. General definitions of terms

In the following General Service Conditions, SPEKTRA Schwingungstechnik und Akustik GmbH Dresden, Heidelberger Straße 12, 01189 Dresden, is referred to as SPEKTRA. The contractual partner of SPEKTRA is the Client; the contractual relationship to be concluded is the Contract.

## 2. Scope of application

**2.1** These General Service Conditions apply to all business relationships with Clients of SPEKTRA in respect of services in relation to the devices manufactured or supplied by SPEKTRA (hardware) or software or substantively related ancillary services provided by SPEKTRA (e.g. calibration services), where the Client is a business customer.

**2.2** Business customers within the meaning of these General Service Conditions are all economic operators (Section 14 of the Civil Code), legal entities governed by public law, and ring-fenced public funds. Economic operator is defined as

any natural person or legal entity or partnership with legal capacity who or which, on conclusion of the contract, engages in a commercial or independent professional activity.

**2.3** Differing, contradicting, or supplementary General Business Conditions of the Client form part of the Contract only if and to the extent that SPEKTRA has expressly consented to their applicability. This requirement for consent applies in every case, for example also where SPEKTRA takes receipt of the supplies of the Client without reservation, in knowledge of the General Business Conditions.

**2.4** Individual agreements with the Client made in individual cases (including riders, supplements, and amendments) always take precedence over these General Purchase Conditions. The content of such agreements is determined by a contract concluded in writing or the confirmation of SPEKTRA in writing.

**2.5** The General Service Conditions apply in their prevailing version as a framework agreement also for future contracts for the servicing of hardware or software manufactured or supplied by SPEKTRA (including related ancillary services) with the same Client, without SPEKTRA in each instance having to refer to them once more. The prevailing version of the General Service Conditions is available at:

<https://www.spektra-dresden.com/en/legal.html>

**2.6** SPEKTRA retains the right to make amendments or additions to the General Service Conditions at any time, provided that the Client is not thereby disadvantaged in bad faith. Amendments or additions to the General Service Conditions are notified in writing. The amendments or additions to the Participation Conditions are deemed to have been approved if the Client does not object to them in writing within two weeks from notification. If the Client objects to the amendment or addition, SPEKTRA may terminate the contractual relationship through ordinary termination.



### 3. Components of the contract

The list of the hardware and/or software to be serviced, which is presented to SPEKTRA by the Client on conclusion of the Contract, the service description, and the price list are key components of the contractual relationship.

### 4. Remuneration

**4.1** Services, unless otherwise stipulated below, are invoiced on the basis of the hourly fee agreed between the parties, the work performed by SPEKTRA (plus travel and waiting, and cost and expense reimbursements), and the spare parts and materials used by SPEKTRA (other parts required for repair) in accordance with the time spent.

**4.2** SPEKTRA will record the date, time, and content of the services it provides and present this information as evidence. The Client must counter-sign the service records and/or activity reports presented. The service records and/or activity reports signed by SPEKTRA and the Client's contact serve as evidence for the services provided by SPEKTRA.

**4.3** If the Client's contact does not sign the service records/activity reports provided to him within 14 calendar days, the service record/activity report is deemed tacitly recognised. This does not apply if the Client sends SPEKTRA written substantiated objections within this period.

**4.5** The travel costs and flat-rate off-site employee charges arising when services are provided are calculated separately using the current price list.

**4.6** The service in accordance with Point 2.1 takes place, where possible, by means of remote servicing. The Client may issue instructions concerning the nature, scope, and course of remote servicing.

### 5. Response times

**5.1** The agreed response and completion times start with the receipt of the relevant fault report by SPEKTRA within the following agreed standard service window. If a fault report is received outside the standard service window, the response time starts with the start of the next standard service window. The fault report is equated with the time the Client learns of the fault.

**5.2** The processing of fault reports, the elimination of faults, or servicing outside the agreed service windows must be separately agreed for each individual case, depending on the availability of the service technician. Additional costs thereby arising must be borne by the Client.

### 6. The Client's cooperation obligations

**6.1** The Client ensures that all the cooperation required by him or his vicarious agents is provided to the required extent and free of charge to SPEKTRA. The Client's cooperation obligations and his obligations to provide materials are major obligations of the Client.

**6.2** The Client provides SPEKTRA's employees with all required support in their work at the Client's premises. In particular, he makes available all required information, documents, sufficient infrastructure, staff, and hardware and also provides the organisational support additionally required. This also includes the timely provision of data capture capacities, processor times, data connections, and the files required for the fulfilment of the order, to a sufficient extent. Further duties and obligations of the Client are to be separately stipulated in the order.

**6.3** Data carriers made available by the Client must be immaculate in terms of content and technically. If this is not the case, the Client will reimburse SPEKTRA for the losses it suffers from the use of such data carriers and indemnifies



SPEKTRA against all claims of third parties. Appropriate data security measures before and during the performance of the service by SPEKTRA are the responsibility of the Client. The Client keeps copies of all documents and data carriers provided, which SPEKTRA can access at any time and free of charge.

**6.4** If the Client does not cooperate as required, in a timely manner, and as agreed, he will bear the resultant consequences (e.g. delays, additional cost).

**6.5** For the services to be provided at the Client's premises, an executive-level contact for SPEKTRA's employees must be appointed and remain available, and he will have the responsibility, jurisdiction, and authority in respect of all questions arising concerning fulfilment of the order. If the executive-level contact is switched or unavailable long term, a successor or deputy is immediately notified to SPEKTRA in writing.

## 7. Guarantee

**7.1** For defects in its services, SPEKTRA is liable in accordance with the statutory provisions, unless otherwise stipulated below.

**7.2** If SPEKTRA supplies hardware or software to the Client as part of its services, SPEKTRA assumes liability for the supplies and services having the service characteristics and scope agreed in the Contract.

**7.3** Defects in services provided by SPEKTRA must be notified by the Client to SPEKTRA, immediately and in writing. The Client takes all reasonable and necessary measures to identify, limit, and document the defects. Where SPEKTRA is liable for defects, he provides SPEKTRA with all available information and supports the elimination of the defects.

**7.4** Immediately after receipt of the defect notification, SPEKTRA will investigate and analyse the defect reported and perform rectification within a reasonable period. As SPEKTRA chooses, rectification takes place by means of remanufacture or by eliminating the defect or – additionally in the case of software – by presenting ways to avoid the effects of the error. In the latter case, the Client will use the workaround solution until the next software version, from which the error has been eliminated, is delivered. Hardware products installed as part of the rectification need not be new but will always have the same functionality and suitability as mint-condition hardware.

**7.5** If reported defects are not attributable to SPEKTRA, the Client will reimburse SPEKTRA for the time spent and the costs incurred (in particular including the travel costs) at the prevailing or suitable rates.

**7.6** If rectification definitively fails after several attempts despite a suitable cut-off deadline set in writing, the Client may reduce the remuneration by a suitable proportion or rescind the Contract. If only parts of the supplies and services provided by SPEKTRA are affected and the other elements of the supplies and services are meaningfully usable, the right to rescission is limited to the defective elements of the supplies and services.

**7.7** The above guarantee does not apply where there is only an insignificant deviation from the agreed characteristics or only an insignificant impairment of usability or if there is an error that stems from non-compliant or unsuitable servicing, installation, repair, or calibration by the Client or unauthorised third parties or from hardware or software, connections, or materials supplied by the Client or third parties. The above guarantee also does not apply if the Client modifies the supplies and services without the consent of SPEKTRA or uses them in breach of the instructions for use or the contractual provisions. In such instances, the Client may show and prove that the modifications or the use in breach of the instruc-



tions for use or the contractual provisions are/is not linked to the error occurring. SPEKTRA's obligation in respect of its liability for defects lapses also if the Client deploys software in a hardware or software environment which differs from what was intended. The Client may then show and prove that the error arising is not linked to the software being deployed in a hardware or software environment different from what was intended.

**7.8** The Client may make no other or more extensive guarantee claims. In particular, SPEKTRA does not guarantee that the devices serviced will function without interruption or fault.

**7.9** Unless otherwise agreed, the limitation period for guarantee claims is twelve (12) months and starts with receipt or handover. If SPEKTRA's service scope includes the installation of software or hardware, liability for defects starts with installation. This applies also to the supply of spare parts and repairs taking place after the end of the original guarantee period. Free repairs or the replacement of hardware parts constitute(s) acknowledgement of a defect only if SPEKTRA so confirms expressly in writing.

## 8. Liability

**8.1** Unless otherwise indicated in these General Service Conditions, including the following provisions, SPEKTRA is liable in the event of a breach of contractual and extracontractual obligations in accordance with the relevant statutory provisions.

**8.2** SPEKTRA is liable for compensation – regardless of the legal basis–in the event of intent and gross negligence. In the event of simple negligence, SPEKTRA is liable only:

- a) For losses arising out of loss of life, injury, or damage to health,
- b) For losses arising out of a breach of a material contractual obligation (an obligation whose fulfilment is required for the due performance of the Contract and whose discharge the cont-

ractual partner regularly relies on and may rely on); in this instance, SPEKTRA's liability, however, is limited to compensation for foreseeable, typically occurring losses and, in the case of pecuniary losses, is limited to the net remuneration agreed in the case in question.

**8.3** Shared culpability on the part of the Client reduces any claim for compensation commensurately.

**8.4** The limitations of liability arising out of Point 8.2 do not apply where SPEKTRA remains deceitfully silent concerning a defect or has assumed a guarantee for the characteristics of the item. The same applies to claims of the Client in accordance with the Product Liability Act.

**8.5** Further liability for compensation beyond what is provided for in Points 8.1-8.4 is precluded, regardless of the legal nature of the claim made. This applies in particular to claims for compensation arising out of culpability when the Contract is concluded, due to other breaches of obligation, or due to tort claims for compensation of property losses in accordance with Section 823 of the Civil Code.

**8.6** Where SPEKTRA's liability for compensation is precluded, this applies also in relation to the personal liability for compensation on the part of its employees, representatives, and vicarious agents.

**8.7** The above liability rules do not entail an alteration to the burden of proof to the detriment of the Customer.

## 9. Force majeure

**9.1** Where SPEKTRA is hindered by a force majeure from fulfilling its contractual obligations, SPEKTRA is relieved of its service obligation for the duration of the hindrance and for a sufficient lead time thereafter, without being obliged to



pay compensation to the Client. The same applies where SPEKTRA's fulfilment of its obligations is unreasonably hindered or temporarily obstructed by circumstances that are unforeseeable and not attributable to SPEKTRA, in particular by industrial dispute, public measures, power outages, or major disruptions to operations.

**9.2** SPEKTRA may rescind the Contract in full or in part if such a hindrance persists for more than four months and loses interest in the fulfilment of the Contract due to the hindrance. At the request of the Client, SPEKTRA will explain once this period has elapsed whether it will exercise its right to rescind or will accept the service within a suitable deadline.

## 10. Termination of the contract

**10.1** The service contract is concluded for an indefinite period and may be terminated by either contractual partner with notice of three months to the end of a calendar quarter.

**10.2** SPEKTRA may terminate the contract prematurely, in particular when:

- The Client fails to comply with his cooperation obligations in accordance with Point 6 despite being requested to do so by a suitable deadline,
- The Client, despite a reminder and the setting of a deadline, does not fulfil his payment obligations (including in relation to part payments and/or down-payments).

**10.3** The Client's right to effect extraordinary termination on material grounds remains unaffected by this.

## 11. Retention of title

**11.1** Until full payment of all current and future receivables of SPEKTRA arising out of the service

contract and the ongoing business relationship with the Client (validated receivables), SPEKTRA retains title to the items sold.

**11.2** The items subject to retention of title may not be pledged to third parties or assigned as security before full payment of the validated receivables. The Client must inform SPEKTRA immediately and in writing if and to the extent that third parties gain access to the items belonging to the Supplier.

**11.3** In the event of conduct by the Client in breach of the contract, in particular if the service fees due are not paid, SPEKTRA, in accordance with the statutory provisions, may rescind the Contract and demand return of the item on the basis of the retention of title and the rescission. If the Client does not pay the service fee due, SPEKTRA may exercise these rights only if it has previously set the Client a suitable deadline for payment in vain or setting such a deadline is redundant in accordance with the statutory rules.

**11.4** The Client is entitled, in the ordinary course of business, to resell and/or process the items subject to the retention of title. In this case, the following provisions apply additionally.

The retention of title extends to the products manufactured through processing, mixing, or combining of the items supplied at their full value, with SPEKTRA deemed the manufacturer. If, in the event of processing, mixing, or combination with the items of third parties, retention of title thereto persists, SPEKTRA acquires co-ownership in proportion to the book value of the items processed, mixed, or combined. Otherwise, the same applies to the product manufactured as to the item delivered subject to retention of title.

The receivables due from third parties arising out of the resale of the item or the product are hereby assigned by the Client to the Supplier in full or at the level of any co-ownership share of SPEKTRA in accordance with the previous paragraph by



way of security. The Supplier accepts the assignment. The Client's obligations referred to in Paragraph 11.2 apply also in relation to the receivables assigned.

The Client remains entitled to collect payment in respect of the receivable side-by-side with SPEKTRA. SPEKTRA undertakes not to collect payment in respect of the receivable whilst the Client is fulfilling his payment obligations towards SPEKTRA, the Client does not fall into payment arrears, no application is filed for the institution of insolvency proceedings, and there is no other impairment of his solvency. If any of these is the case, however, the Supplier may demand that the Client notifies to him the receivables assigned and the related debtors, provides him with all information required for collection, provides him with the pertinent documents, and notifies the assignment to the debtors (third parties).

If the realisable value of the security exceeds SPEKTRA's receivables by more than 10%, SPEKTRA will release security at the request of the Client and at his own discretion.

## 12. Confidential information and data protection

**12.1** The contractual partners undertake to keep secret the information and documents they provide to each other or receive in connection with the implementation of the contract and to adopt suitable measures within the meaning of Section 2 Point 1 Letter b of the Commercial Secret Act to prevent their disclosure to and exploitation by third parties. Employees of the contractual partners, where not already obliged under their employment contract to do so, are obliged to keep secret such information and documents and refrain from exploiting them, to the extent that they come into contact with the contractual services. The same applies to suppliers of both partners. The same applies to their exploitation.

**12.2** The obligation to maintain secrecy and refrain from exploitation of the information the contractual partners provide to each other or receive in connection with the implementation of the contract lapses where such information:

- Was demonstrably known to the contractual partner informed before the information provision or
- Was known or generally available to the public before the information provision or
- Becomes known or generally available to the public after the information provision without cooperation or culpability on the part of the partner informed
- Largely represents information that is disclosed or made available at some point by an authorised third party to the contractual partner informed.

**12.3** The obligation to maintain confidentiality does not apply if there is an obligation to disclose the confidential information under an order by a court or public authority or under statute.

**12.4** The confidentiality obligation applies also after the end of the contract.

**12.5** The contractual partners undertake to comply with the provisions of data protection statute and the European General Data Protection Regulation in the version prevailing at the time. The contractual partners will impose such obligations on their employees, suppliers, and other persons who come into contact with the contractual services.

## 13. Venue, applicable law

**13.1** The fulfilment location and venue for all disputes arising between the parties out of the contractual relationship (including those arising out of bills of exchange and cheques) is Dresden, where the Client is a merchant, a legal entity governed by public law, or a ring-fenced public fund or the Client has no general venue in the



Federal Republic of Germany or has moved his venue abroad.

**13.2** SPEKTRA is also entitled to sue at the court competent in respect of the Client's registered office.

**13.3** All contractual and other legal relations between the parties are subject exclusively to German law, precluding application of the UN Convention on Contracts for the International Sale of Goods (CISG).

## 14. Severability clause

If a provision of these General Service Conditions or a provision of other agreements is or becomes invalid, this will not affect the validity of all other provisions or agreements.

Dresden, April 2020